

ALLEGATION DISPOSITION RECORD

Rev. 6/6/97

Allegation No.: RI-97-A-0033
RI-97-A-0126

Branch Chief (AOC): Rogge

Site: FitzPatrick

Acknowledged: **Yes**

Panel Date: July 30, 1997

Confidentiality Granted: **No**

Issue discussed (if other than original allegation): **Formal referral of concerns to NYPA/suspend NRC inspection efforts on issues as originally planned**

Alleger contacted prior to referral to licensee (if applicable)? **Yes (See Barkley to Vito E-Mail dated July 27, 1997)**

ALLEGATION PANEL DECISIONS (Previous Allegation Panels on issue: **Yes**)

Attendees: Chair - Crlenjak Branch Chief(AOC) - Rogge SAC - Vito/Dolce

OI Rep. - Wilson RI Counsel - Fewell Others - Conner, R. Telson

DISPOSITION ACTIONS: (State actions required for closure (including special concurrences), responsible person, ECD and expected closure documentation)

1) Update letter to alleger detailing our revised approach to his concerns to postpone NRC inspection and refer the issue to the NYPA.

Responsible Person: Barkley

ECD: 8/8/97

Closure Documentation: _____

Completed: _____

2) Formally refer all of the alleger's technical issues to NYPA for their review and response within 30 days.

Responsible Person: Barkley

ECD: 8/8/97

Closure Documentation: _____

Completed: _____

3) Review NYPA's response to determine whether any additional NRC inspection effort is warranted or whether any enforcement issues exist. Requires DRS assist, OI to review potential H&I issues.

Responsible Person: Barkley/Andersen (OI)

ECD: 10/1/97

Closure Documentation: _____

Completed: _____

4) **Also repanel the allegation after NYPA has completed their investigation.**

Responsible Person: **SAC**

ECD: **10/15/97**

B/6

Closure Documentation:

Completed:

Safety Significance Assessment: Medium - Allegor has a number of safety concerns, several of which involve NRC regulated activities, although most of his concerns are already in the licensee's corrective action system (some of which have been corrected). Recent reviews by DRS into some of his items indicate no significant issues are present. The licensee now also seems eager to investigate and resolve these concerns on their own.

Priority of OI Investigation _____

NOTES: (Include rationale for any referral to licensee, and identify any potentially generic allegations)

The allegor voluntarily decided to provide all of his concerns (including his alleged H&ID by his middle management) to the Chief Nuclear Officer of NYPA even though he originally brought his concerns to the NRC first.

Issue not to be referred to licensee

A. Region 1 should refer as many allegations as possible to the licensee for action and response unless any of the following factors apply:

- Information cannot be released in sufficient detail to the licensee without compromising the identity of the allegor or confidential source (unless the allegor has no objection to his or her name being released).
- The licensee could compromise an investigation or inspection because of knowledge gained from the referral.
- The allegation is made against the licensee's management or those parties who would normally receive and address the allegation.
- The basis of the allegation is information received from a Federal agency that does not approve of the information being released in a referral.

Even if the above conditions exist, Region 1 shall refer the substance of the allegation to the licensee regardless of any factor if the allegation raises an overriding safety issue, using the guidance in Management Directive 8.8.

Factors to Consider Prior to Referral to a Licensee

In determining whether to refer eligible allegations to a licensee, The Region 1 Allegation Panel shall consider the following:

- Could the release of information bring harm to the allegor or confidential source?
- Has the allegor or confidential source voiced objections to the release of the allegation to the licensee?

- What is the licensee's history of allegations against it and past record in dealing with allegations, including the likelihood that the licensee will effectively investigate, document, and resolve the allegation?
- Has the allegor or confidential source already taken this concern to the licensee with unsatisfactory results? If the answer is "yes," the concern is within NRC's jurisdiction, and the allegor objects to the referral, the concerns should normally not be referred to the licensee.
- Are resources to investigate available within the region?

Prior to referring an allegation to a licensee, all reasonable efforts should be made to inform allegors or confidential sources of the planned referral. This notification may be given orally and subsequently documented in an acknowledgment letter. If the allegor or confidential source objects to the referral, or does not respond within 30 calendar days, and the NRC has considered the factors described above, a referral can be made despite the allegor's or confidential source's objection or lack of response. In all such cases, an attempt will be made to contact the allegor by phone just prior to making the referral.

Also, referrals are not to be made if it could compromise the identity of the allegor, or if it could compromise an inspection or investigation. Note: Document the basis for referring allegations to a licensee in those cases where the criteria listed above indicate that it is questionable whether a referral is appropriate.

Distribution: Panel Attendees, Regional Counsel, OI, Responsible Persons (original to SAC)

Options for Resolution:

Licensee Referral (Div. Dir. Concurrence Required (First Consider Factors Prior to Referral)
/ Document NRC Review of Response - Resp. - AOC)

Referral to Another Agency (OSHA, etc. - Resp. - SAC)

Referral to an Agreement State (MD, ME, NH, NY, RI - Resp. - SAC)

Referral to Another NRC Office (OIG, NRR, Other Regions - Resp. - SAC)

Request for Additional Info.(From allegor, licensee, others - Resp. - AOC)

Closeout Letter/Memo (If no further action planned - Resp. - AOC)

Inspection (Resident/Specialist routine or reactive)

IF H&ID INVOLVED:

- 1) has the individual been informed of the DOL process and the need to file a complaint within 180 days (has DOL information package been provided?) Yes

- 2) has the individual filed a complaint with DOL **No**
- 3) if the complainant filed directly with DOL, have they been contacted to obtain their technical concerns (Resp. - SAC) **N/A**
- 4) is a chilling effect letter warranted: **No**
(DOL finding in favor of allegor)
(conciliation w/licensee prior to DOL decision)

ADDITIONAL NOTES: _____